

Fair Political Practices Commission

To: Chairman Randolph; Commissioners Downey, Karlan, Knox and Swanson

From: Luisa Menchaca, General Counsel
Lawrence T. Woodlock, Senior Commission Counsel

Subject: Pending Litigation

Date: April 28, 2003

1. *California ProLife Council, Inc. v. Karen Getman et al.*

This case involves a challenge to the Act's reporting requirements regarding express ballot measure advocacy. On October 24, 2000 the district court dismissed certain counts for standing and/or failure to state a claim. On January 22, 2002, the court denied a motion for summary judgment filed by plaintiff, and granted the FPPC's motion, after concluding that "the constitutional case or controversy requirement of ripeness cannot be satisfied." This resolved all claims in favor of the FPPC.

The Court entered judgment accordingly on January 22, 2002, and plaintiff filed a timely Notice of Appeal with the Ninth Circuit Court of Appeal. The appellate case has been briefed by the parties, and by Amici The Brennan Center for Justice and the National Voting Rights Institute (joining in one brief) and the states of Washington, Nevada and Oregon (joining in one brief.) The matter was heard by Circuit Judges Rymer, Trott and Tallman on February 11, 2003, and is now pending decision.

2. *Danny L. Gamel et al. v. FPPC*

In September 2001, the Commission adopted the proposed decision of an Administrative Law Judge assessing a penalty of \$8,000 against plaintiffs for making campaign contributions in violation of §§ 84300 – 84302. Plaintiffs contested this decision by Writ of Mandate in the Fresno County Superior Court. On March 21, 2002, the Court upheld the Commission's determination that Dan Gamel and Rudy Olmos violated the Act, but vacated the finding against Gamel Inc. Penalties assessed against Dan Gamel were affirmed but the Court remanded the case to the Commission for reconsideration of the penalty assessed against Mr. Olmos. Plaintiffs filed a notice of appeal of the Superior Court's decision regarding the fines assessed against Mr. Gamel and the findings against Mr. Olmos. The matter was set for hearing on May 14, 2003 at 10:00 a.m, but the parties have waived oral argument and the court will now decide the matter without hearing, on the papers already submitted by the parties.

3. *Levine et al. v. FPPC*

On January 22, 2002, four publishers of “slate mail” filed suit in Federal District Court alleging that the Act’s slate mail identification and disclosure requirements (§§ 84305.5 and 84305.6) violate their constitutional rights. The first of these statutes contains identification and disclaimer provisions in effect prior to enactment of Proposition 208, while § 84305.6 was introduced by Proposition 34. The Status Conference originally scheduled for April 29 was continued to June 10, 2002, to coincide with the hearing on plaintiffs’ motion for preliminary injunction before Judge Lawrence K. Karlton. The hearing was conducted on July 29, 2002. The Court declined to conduct a Status Conference on the ground that its ruling on the preliminary injunction might affect pretrial scheduling. On September 25, 2002, the court entered a preliminary injunction barring FPPC enforcement of the challenged statutes against three of the four plaintiffs. The court has not yet issued a Scheduling Order or set a further Status Conference, which would establish a trial date and timelines for pretrial proceedings.

4. *FPPC v. Californians Against Corruption et al*

The case stems from the FPPC’s 1995 administrative prosecution of a recall committee that failed to properly itemize its contributors, in violation of section 84211. In November 1995, the FPPC issued a default decision and order against defendants, imposing an administrative penalty of \$808,000. In January 1996, the FPPC brought a collection action in the Sacramento Superior Court to convert the penalty to a civil judgment. Defendants responded by filing a cross-complaint/petition for writ of mandate in the Superior Court, contesting the default decision. In July 2000, the Superior Court dismissed the defendants’ pleadings for failure to prosecute. In March 2001, the Superior Court granted the FPPC’s motion for summary judgment in the collection action, and entered judgment for \$808,000 plus interest. Defendants then filed this appeal in April 2001, before the Third District Court of Appeal. After briefing, the court indicated that it was prepared to decide the matter without oral argument. On February 11, 2003 defendants filed a request for oral argument, which was granted. The matter was heard on April 22, and is now pending decision.

5. *Peninsula Health Care District v. FPPC*

This case challenged the Commission’s recent Opinion, *In re Hanko*, O-02-088, adopted on August 9, 2002. The Commission concluded that a customer of Ms. Hanko’s employer could be a disqualifying source of income under certain circumstances, even though the customer dealt with Ms. Hanko’s employer through an intermediary. A Petition for Writ of Mandate was filed in the Court of Appeal on or about November 1, 2002. A week later, the Court of Appeal denied the writ without prejudice to re-filing in an appropriate superior court. On November 15, 2002, plaintiff filed a new Petition in the Sacramento County Superior Court. The hearing originally set for January 31 was conducted on February 7, 2003. On March 3, the court ruled in favor of the Commission, and judgment for the Commission was entered on March 26, 2003.

6. *FPPC v. Agua Caliente Band of Cahuilla Indians, et al.*

The FPPC alleges in this action that the Agua Caliente Band of Cahuilla Indians contributed more than \$7.5 million to California candidates and ballot measure campaigns between January 1 and December 31, 1998, but did not timely file major donor reports disclosing those contributions. The suit also alleges that the Agua Caliente Band failed to timely disclose more than \$1 million in late contributions made between July 1, 1998 and June 30, 2002. The FPPC later amended the complaint to add a cause of action alleging that the tribe failed to disclose a \$125,000 contribution to the Proposition 51 campaign on the November 5, 2002 ballot. The Agua Caliente Band has filed a Motion to Quash Service for Lack of Personal Jurisdiction, alleging that it is not required to comply with the Political Reform Act because of its tribal sovereign immunity. A hearing on that motion was held on January 8, 2003, before the Honorable Loren McMaster, in Department 53 of the Sacramento County Superior Court. On February 27, the court ruled in the Commission's favor. On April 7, 2003, the Agua Caliente Band filed a petition for writ of mandate with supporting exhibits in the Third Appellate District of the Court of Appeal challenging the decision of the trial court. The petition was summarily denied on April 24, 2003.

7. *FPPC v. Santa Rosa Indian Community of the Santa Rosa Rancheria*

The FPPC alleges in this action that the Santa Rosa Indian Community of the Santa Rosa Rancheria (the Santa Rosa Rancheria) failed to file major donor semi-annual campaign statements in the years 1998, 1999, and 2001, involving more than \$500,000 in political contributions to statewide candidates and statewide propositions. The suit also alleges that the Santa Rosa Rancheria failed to disclose more than \$350,000 in late contributions made in October 1998. The complaint was originally filed on July 31, 2002, and was amended to October 7, 2002. On January 17, 2003, the Santa Rosa Rancheria filed a Motion to Quash Service of Summons and First Amended Complaint. This motion is based upon its claim of tribal sovereign immunity from suit. The FPPC's response to the motion was filed on February 10, 2003. The matter was originally scheduled to be heard on February 20, 2003, but was continued to March 6, 2003 at the request of Defendant. The matter was heard on that date before the Honorable Joe S. Gray in Department 54 of the Sacramento County Superior Court, and on April 24, 2003 the court ruled in favor of Defendant. The Commission has 60 days to decide whether to file an appeal of this decision.